

Guidelines for Reviewing Financial Guarantee Costs

BLM's Review and Evaluation Role

BLM's task is to review and evaluate the operator's financial guarantee cost estimate to determine if he/she has correctly identified and incorporated all of the applicable reclamation and administrative costs (identified below). The reclamation costs included in financial guarantee calculations for new Notices and Plans of Operations will be reviewed and evaluated based on the reclamation standards according to 43 CFR 3809.420. Operator estimates of reclamation costs for extended Notices shall be reviewed based on the 43 CFR 3809.1-3(d) reclamation measures that were in effect immediately prior to January 20, 2001 (43 CFR parts 1000-end, revised as of October 1, 2000). In reviewing reclamation costs estimates for extended Notices, BLM must ensure that the operator documents what reclamation measures will be performed to meet the reclamation measures in 43 CFR 3809.1-3(d). The responsible BLM field office must agree that these measures will prevent unnecessary and undue degradation and documentation of these reclamation measures must be contained in the case file.

In performing this review, if the operator has not included BLM's administrative costs, the responsible BLM office will notify the operator (in writing) of those costs along with any deficiencies or additional information needed in order for BLM to complete the review. The BLM office may assist the operator in identifying costs to be included in the estimate. An operator is not required to hire a professional engineer or geologist to prepare a cost estimate but in some cases it may be desirable for them to do so. BLM may recommend this option to the operator, but may not recommend any specific individual or firm. It is not BLM's responsibility to calculate the reclamation cost for an operator, but rather to determine if the reclamation cost estimate provided by the operator is acceptable.

Notice and Plan of Operations Costing Estimates

In reviewing reclamation cost estimates the field office review must ensure the operator has provided the following when applicable:

Costs must be estimated as if BLM were hiring a contractor to perform all required reclamation (43 CFR 3809.552(a)).

Costs must include the use of off-site equipment as if the project area was vacated, and they must include all associated mobilization and demobilization costs [43 CFR 3809.554(a)].

The operator's estimate must cover all reclamation requirements in Notices and approved Plan of Operations [43 CFR 3809.301(b), .401(d), .552(a) and 43 CFR 3809.1-3(d) for extended Notices].

The estimate must include when applicable, all interim maintenance to maintain compliance with applicable environmental requirements while contracts are developed and executed [43 CFR 3809.552(a)].

The estimate must cover costs to construct any identified long-term treatment facilities required by the filed Notice or approved Plan of Operations [43 CFR 3809.552(a)]. (Generally applied to cyanide operations and operations that result in acid mine drainage).

Labor costs for construction (earth moving) must be based on federally mandated labor rates (Davis-Bacon wages for contracts over \$2,000) as required by law and Subpart 22.4 of the Federal Acquisition Regulations (FAR). If a contract is solely for the dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration or repair of the improvements at that location are contemplated. If such further work is intended, even through a separate contract, then the Davis-Bacon (D-B) wages apply. (www.access.gpo.gov/davisbacon)

If Davis-Bacon wages or a contractor's estimate is used to determine a cost, there is the possibility of double accounting when it comes to applying a "Profit" line item. Depending on how the D-B wages are listed, they may include base pay, payroll loading (Social Security Workers Compensation, and Unemployment Insurance), overhead, and profit. For example, last year a typical dozer operator in Idaho was paid \$37.59 to \$40.25 per hour. This wage included 14.6 percent payroll loading, 10 percent overhead, and 6 percent profit.

Contractors typically apply all costs, including profit to a bid estimate. An itemized estimate should be requested if a lump sum estimate is submitted.

It is recommended that the responsible BLM specialist coordinate with their state procurement analyst concerning current labor wages, contracting requirements, and advice on various types of contracts, contract language, and administration.

Cost Identification

The costs identified below must be included in the financial guarantee estimate. This will require the reviewer to pay attention to costing standards that are in part based on the Federal Acquisition Regulations (FAR). This instruction contains suggested percentages for meeting these requirements that are to be treated as rules of thumb and not as precise costs specified by the regulations. Costs other than those listed below may be included in a calculation if they are explicitly addressed in a Federal-State agreement regarding the financial guarantee and are required by state law.

- 1) Operating and Maintenance (O&M) Costs - The operator's estimate must identify the relevant O&M costs relating to reclamation including:
 - a) Equipment rental or acquisition costs
 - b) Equipment operation costs

- c) Equipment maintenance costs.
- d) Cost of operating supplies.
- e) Labor costs for operations, maintenance and supervision.
- f) Reclamation materials acquisition costs.

2) BLM Administrative Costs - BLM must ensure that the accepted financial guarantee estimate includes the required administrative costs:

- 1) The cost to BLM to develop an Engineering, Design and Construction (ED&C) Plan for reclamation should the operator not reclaim (implementation of the reclamation plan).
 - a) Reported costs for plan preparation have ranged from 0.5 to 10 percent of the estimated operation and maintenance costs.
 - b) You should base your amount on a survey of similar contracts within your state.
- 2) A contingency fund to cover unforeseen circumstances related to the ED&C Plan.
 - a) Federal and state agencies that routinely prepare construction cost estimates generally apply a contingency of 3 to 10 percent of the estimated operation and maintenance costs.
 - b) You should base your amount on a survey of similar fees within your state. Where State law specifies the amount, please use that figure.
- 3) The prime contractor's profit of approximately 10 percent of the estimated O&M costs.
- 4) The contractor's liability insurance premium equal to 1.5 percent of the estimated labor costs for the project with estimated contract costs over \$100,000.
- 5) A set amount equal to 3 percent of the estimated O&M costs for the payment of premiums for both a performance bond and a payment bond as required by the Miller Act with estimated contract costs over \$100,000 (40 U.S.C. 270et seq.).
- 6) BLM's Labor and Operations costs for the Field and State offices to administer the contract.
 - a) Estimates for covering the contract administration ranges from 10 to 18 percent of the estimated O&M costs.
 - b) You should survey your contract administration and inspection costs to determine the most reasonable amount for your state.

- 7) BLM's indirect costs (building rental, electricity, telephone, etc.). The indirect cost rate to be assessed on all cost recoverable, reimbursable, trust, and road maintenance projects for FY 2003 is 17.8 percent (see WO IM 2003-011, October 8, 2002).

Determining the Acceptability of a Reclamation Cost Estimate

The responsible BLM office should cost out the reclamation operation to ensure the operator's estimate is acceptable. The attached *Reclamation Cost Estimate Summary Sheet* (Attachment 2) is provided as an aid in the process of documenting the reclamation cost estimate. Also attached is a *Reclamation Financial Guarantee Checklist* (Attachment 3) that should be used in calculating the engineering and environmental costs required to properly stabilize and reclaim the disturbed area. The checklist is designed to accompany the *Reclamation Cost Estimate Summary Sheet*. Neither the summary sheet nor the check-list are all-inclusive, but both are intended to serve as a reminder of issues that should be considered.

Additional sources that may be useful in conducting a cost analysis are: applicable parts of the Office of Surface Mining "Handbook for Calculation of Reclamation Bond Amounts" (<http://www.wrcc.osmre.gov/>), BLM's Solid Minerals Reclamation Handbook H-3042-1, the Caterpillar Performance Handbook, Western Mine Engineering, Means Site Work Cost Data, Dataquest (equipment operating and owning costs), and Heaprec (U.S. Bureau of Mines software for calculating reclamation costs).

Alternative Method for Notice Operations

For proposed exploration to be conducted under a Notice it may be appropriate for BLM to develop and use a standard reclamation cost schedule (Excel spreadsheet) in lieu of detailed calculations of financial guarantee amounts based on engineering designs. The concept behind the use of a standard amount for a reclamation cost estimate is to keep the workload in calculating the reclamation costs commensurate with the risk associated with the activity. The schedule may be developed based on local/regional costs to reclaim typical notice-level activities (roads, drill pads, drill-hole abandonment, trenches, pits, structure removal, site stabilization, re-vegetation etc.) for specific kinds of terrain (topography). Such a schedule may be developed by the BLM specialist conducting a survey of local/regional-licensed contractors/excavators to determine an average reclamation cost for a specific activity. The cost estimate may be expressed in dollars per acre, dollars per linear foot, or some other unit of measure that is appropriate for the particular activity.

Attachment 4 (*Reclamation Cost Model for Notice-Level Operations*) is an example of a standard reclamation cost schedule concept that has been adapted to a cost model (Excel spreadsheet). The model can be modified to accommodate different sizes and types of equipment for specific activities and terrains in order to develop the input costs.

Where a BLM State or field office develops a reclamation cost schedule for estimating the amount of the required financial guarantee for Notice operations, the schedule must be reviewed every two years to ensure the costs inputs are kept current.

A standard reclamation cost estimate should only be used where the Notice operation meets the activity and terrain profile used in establishing the standard amount. The use of a standard schedule for the reclamation cost estimate is optional and an engineering cost analysis is always an acceptable alternative. In all cases, the financial guarantee estimate should always be sufficient to fully reclaim the site, using a third party.

Review Results and Decisions

Acceptable Review Results - When you have received an estimate that is acceptable, you must provide the operator with a written decision as to the amount of the required financial guarantee (43 CFR 3809.554(b)). An operator may not begin operations under a new or modified Notice or approved Plan of Operations without first providing BLM with an acceptable financial guarantee that meets the requirements of 43 CFR 3809.551 thru 3809.572. Notices on file with the BLM on January 20, 2001 that are extended as provided for under 43 CFR 3809.333, may continue operations for 60 days from receipt of the decision to submit an acceptable financial guarantee (WO IM 2003-042).

Unacceptable Review Results - If you find the operator has incorrectly calculated operating and maintenance costs or you find that the estimate is based on out-of-date cost data that does not reflect the actual cost of reclamation; the estimate will not be accepted. When an estimate is not acceptable, you must notify the operator, in writing (decision), of the unacceptability, identify the deficiencies or errors that led you to your conclusion, and require a submission of a corrected calculation. You must also advise the operator to incorporate the administrative costs outlined above if they are not included in the estimate.* Where the reclamation cost estimate for a new Notice is not acceptable to the BLM, the Notice will not be considered complete as required under 43 CFR 3809.301. A Plan of Operations reclamation estimate cost/financial guarantee should be submitted by the operator at a time specified by BLM [43 CFR 3809.401(d)]. Operators are prohibited from commencing operations until a financial guarantee has been provided that is acceptable to the BLM [43 CFR 3809.605(d)]. If you find that the estimate for an extended Notice is not acceptable, you must issue a decision (Additional Information Required) as described in WO IM 2003-042, giving the operator 30 days from receipt to provide all of the requested information.

Decisions regarding Reviews – Decisions relating to the acceptability or unacceptability of a financial guarantee are subject to appeal under the provisions of 43 CFR 3809.800. An operator may elect to seek a State Director review under 43 CFR 3809.800(a) or file an appeal directly with the Office of Hearings and Appeals (OHA) under 43 CFR 3809.801. When the review and evaluation of a financial guarantee and/or instrument has been conducted by the State Office, a request for State Director review under 43 CFR 3809.806 may not be accepted.

* A financial guarantee is composed of the reclamation cost estimate and the required administrative costs.